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Illinois Bell Telephone Company)	
)	
Application for Review of Alternative)	Docket No. 98-0252
Regulation Plan)	
Petition to Rebalance Illinois Bell)	
Telephone Company's Carrier Access)	Docket No. 98-0335
and Network Access Line Rates)	
Citizens Utility Board and People of the)	
State of Illinois, ex rel. James E. Ryan,)	
Attorney General of the State of Illinois,)	
Complainants)	
vs.)	Docket No. 00-0764
Illinois Bell Telephone Company d/b/a)	
Ameritech Illinois,)	(consolidated)
Respondent)	

GCI'S REPLY BRIEF ON THE IMPACT OF HB 2900

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The People of the State of Illinois, by James E. Ryan, Attorney General (AG), the Cook County State's Attorney's Office (CCSAO), and the Citizens Utility Board (CUB), collectively Governmental and Consumer Intervenor (GCI), respond to the briefs of Ameritech Illinois ("AI"), Staff, AT&T, McLeodUSA and the City of Chicago as follows:

I. AI's POSITION THAT THE COMMISSION SHOULD NOT ADOPT ANY CUSTOMER-SPECIFIC REMEDIES IN THE PLAN THAT WOULD BE DIFFERENT FROM, OR IN ADDITION TO, THOSE ADOPTED UNDER SECTION 13-712 IS NOT GROUNDED IN LAW OR FACT.

In its Brief on the effect of HB 2900, AI asserts that the Commission's final order in this docket should not adopt any customer-specific remedies in the Plan that would be different from, or in addition to, those adopted pursuant to Section 13-712. AI Initial Brief on Impact of New Legislation at 4. AI argues that "different system programming, methods and procedures, and employee training would be required to implement those remedies than would be required to implement the remedies in Section 13-712." Id. The Company also opines that it will have spent an enormous amount of time, money and resources implementing the Commission's emergency rules under Section 13-712, which would be "wasted" if different compensation levels were invoked in the Plan. Id. Finally, AI suggests that if higher customer-specific remedies are provided under the plan than those levels approved in emergency rulemaking, "opportunities for customer confusion and dissatisfaction" might arise. Id. These arguments should be dismissed as strawman excuses for several reasons.

First, as both GCI and Staff noted in their Initial Briefs on the effect of HB 2900, nothing in HB 2900 affects or undermines the Commission's authority to include enhanced customer credits or

penalties in any alternative regulation plan adopted. *See* GCI Initial Brief on Impact of HB 2900 at 9; Staff Initial Brief on Effects of HB 2900 at 9. The Commission's authority for fashioning both service quality penalties and customer compensation levels is derived from Section 13-506.1 of the Act, which was not modified by HB2900. Section 13-506.1(b) provides that "(t)he Commission shall review and may modify or reject the carrier's proposed plan." That language in and of itself provides the Commission with the authority to fashion a plan, based on the record evidence, that it believes will satisfy the statutory requirements listed in Section 13-506.1 of the Act.

Second, HB 2900 itself makes clear that both the service quality standards outlined in the statute and the customer-specific penalties awarded when carriers fail to meet the listed standards are *minimum* levels. Specifically, Section 712(d) states:

The rules shall, *at a minimum*, require each telecommunications carrier to do all of the following...

- (1) Install basic local exchange service within 5 business days after receipt of an order from the customer...
- (2) Restore basic local exchange service for a customer within 24 hours of receiving notice that a customer is out of service.
- (3) Keep all repair and installation appointments for basic local exchange service, when a customer premises visit requires a customer to be present.

220 5/13-712(d) (2001). In addition, just before the description of the customer-specific remedies to be supplied by ILECs, HB 2900 states:

"At a minimum, the rules shall include the following..."

220 ILCS 5/13-712(e). Accordingly, it is clear that HB 2900 in no way impedes the Commission's authority to fashion a Plan that includes service quality standards and customer-specific penalties that exceed the levels outlined in the new law.

Third, Section 13-506.1(b)(6) provides that the plan adopted must "*at a minimum* ...maintain

the quality and availability of telecommunications services.” 220 ILCS 5/13-506.1(b)(6) (emphasis added). The language “at a minimum...” permits the Commission to adopt service quality standards that are stricter than those provided in HB 2900, which are as noted above, by definition, minimum standards. In addition, this language permits the adoption of customer-specific penalties that are higher than those provided in HB2900.

In addition, HB 2900 establishes service quality standards and customer compensation levels as minimum standards for all ILECs in Illinois. The amendatory statute does *not* take into account the fact that AI, unlike any other ILEC in the state, is regulated under an alternative price cap plan. The Commission has recognized the perverse incentives that accompany price cap regulation in its original Price Cap Order. For example, the Commission specifically noted in 1994:

We recognize that one of the theoretical risks of price regulation is that the Company may, while seeking to maximize its income, reduce expenditures in certain areas in such a manner as to impact service quality adversely.

1994 Price Cap Order at 58. This recognition of the special circumstances inherent under price cap regulation demands a stricter approach to maintaining service quality than might otherwise be employed with rate-of-return carriers.

Moreover, as GCI has articulated in all of its briefs submitted to date, the record evidence, which details the abysmal service quality performance of AI over the life of the existing price cap plan, demands the imposition of strict standards and penalties in order to incite improved performance by the Company.

AI’s argument that imposing stricter customer-specific penalties might lead to customer confusion and dissatisfaction is equally frivolous. First, it is fair to say that AI’s customers are not in the habit of reading the Public Utilities Act, amended or otherwise. The point is that if the customer-

specific compensation level exceeds that provided in Section 13-712, customers will not, generally speaking, know or care about this distinction. Second, it is difficult to understand how a customer who receives substandard service from AI will be somehow dissatisfied if they receive *more* money from the Company than they would have otherwise received pursuant to statute. AI's arguments in this regard simply should not be taken seriously.

Finally, the Company's complaint that establishing customer-specific remedies that are higher than those provided under Section 13-712 would burden AI with "different system programming, methods and procedures, and employee training" and would waste "time, money and resources" is equally specious. AI Initial Brief on Impact of New Legislation at 4. While AI will be forwarding an affidavit that purportedly describes these difficulties, it is unlikely to derail GCI's view that the Company's opposition is little more than rhetoric. In past rulemakings and proceedings involving such issues as customer bill reconfiguration or proposals to eliminate disconnection of local service for nonpayment of toll charges, AI typically complains that the changes being requested will involve significant expense and system reprogramming, and should therefore not be invoked. This hollow excuse should be rejected by the Commission. AI embraced price cap regulation, with all of the advantages and risks that accompany it. As the record has shown, the advantages from a financial standpoint to the Company have been staggeringly great. If the Commission now asks the Company to reconfigure a billing system in order to invoke stricter customer compensation arrangements, the Company must do just that and absorb the expense just like it would any other cost of doing business under alternative regulation.

Moreover, given the fact that imposition of stricter customer compensation levels would be based on the record evidence that details the Company's abysmal service quality performance, the

Commission's final order in this docket should make clear that the costs associated with invoking these differing compensation levels will *not* be recoverable as an exogenous change. If AI suffers in any way financially as a result of penalties and customer compensation provisions related to poor service quality included in the final order in this docket, it has only itself to blame.

II. HB 2900 IN NO WAY SUPPORTS DEDUCTIONS OF CUSTOMER-SPECIFIC COMPENSATION FROM SERVICE QUALITY PENALTY AMOUNTS.

In its Brief, AI argues that HB 2900 supports the Proposed Order's conclusion that customer-specific compensation should be deducted from any annual service quality penalties AI might pay. In support of its position, the Company points to language in 13-712(c), which provides:

In imposing fines, the Commission shall take into account compensation or credits paid by the telecommunications carrier to its customers pursuant to this Section in compensation for the violation found pursuant to this Section.

AI Initial Brief on Impact of New Legislation at 6, citing 220 ILCS 5/13-712(c).

In fact, this cited language in no way relates to annual service quality penalties the Commission would establish under price cap regulation, based on the record evidence in this docket. Section 13-712(c) specifically states that the "fines" being discussed in this provision are fines associated with violations of the Commission's general service quality rules applicable to all ILECs, and not service quality penalties that apply only to AI under a price cap plan. As noted earlier in this Brief, AI is the only carrier in Illinois regulated under price caps. The service quality rules, penalties and customer compensation provisions can and should be established based on the record evidence in this docket. The service quality standards and customer compensation amounts included in Section 13-712 serve as

the minimum requirements for the Commission's establishment of penalties for AI.

As GCI noted in its Brief on Exceptions, the Proposed Order's conclusion that customer-specific credits and "reasonable administrative costs" should be deducted from any annual service quality penalty amounts paid at the end of each year should be rejected for several reasons. First, permitting the Company to deduct from its overall penalty amount all customer credits paid during the year essentially removes any incentives it might have to keep customer credits (and therefore poor service quality performance) to a minimum. If the Company knows, for example, that it will recoup any and all individual customer credit penalties from the overall penalty amount, it is only reasonable to assume that poor performance in these areas takes on a lesser importance from a financial perspective each year.

While it perhaps cannot be said that AI will be *incited* to miss the repair and installation benchmarks, it is fair to say that the incentive to meet these benchmarks dissipates if the Company knows that it ultimately will be reimbursed, assuming annual service quality benchmarks are missed. For this reason, the Commission should strike the language in the HEPO that permits the Company to deduct the individual customer credits from any penalty owed at the end of each year.

The Examiners' caveat that "reasonable administrative costs" should be deducted from the annual service quality penalties paid creates another perverse incentive to AI and undermines its ordinarily expected incentive to try to minimize administrative costs. First, as is becoming increasingly clear in the AI Merger Savings Docket (01-0128), the litigation of annual reports of expenses is a complicated process. Given the Examiners' interest in simplifying the penalty component of the plan, it makes no sense from a policy or legal perspective to permit the

Company to introduce in each annual filing docket its own, unaudited assessment of what its penalty structure administrative costs were for the year. It is a given that Staff and Intervenors would want to analyze the figures provided by AI and conduct cross-examination to the extent deemed necessary. The existing annual filing proceeding, however, is not set up to accommodate such litigation. Indeed, the Commission in its last annual filing order acknowledged this fact when it ordered the establishment of separate proceedings for the litigation of merger savings and cost estimates.

Second, permitting the Company to recoup its “reasonable administrative costs” is such a vague instruction as to invite abuse. No specificity is provided as to what would constitute “reasonable” costs. GCI urge the Commission not to attempt to define such costs in its final Order, but merely reject the notion of reimbursement altogether.

Moreover, it is a given that the Company incurs “administrative costs” each time it is required after the Commission’s annual filing order to reduce rates in accordance with the price cap formula. The Commission did not see fit to award any kind of compensation in 1994 when it established the existing service quality penalty mechanism, and it should likewise not do so now.

Contrary to AI’s argument, HB 2900 in no way provides support of any kind of legal framework for the Proposed Order’s flawed conclusion on this point. Similarly, the Company’s argument that the final Order should be modified to state that the Commission will also consider any customer compensation or annual penalties paid pursuant to the alternative regulatory plan approved in this docket in determining any fines or civil penalties pursuant to Section 13-712 should be rejected for the same reasons.

**III. THE SERVICE QUALITY MEASURES APPROVED IN THIS DOCKET
NEED NOT MATCH THOSE ESTABLISHED FOR ALL ILECS PURSUANT TO
THE COMMISSION'S RULES AND SECTION 13-712.**

In its Brief, AI also posits that the definition of the service quality standards in the final order in this docket should be conformed to the measures adopted in the Commission's Part 730 rules and the rulemaking commenced as a result of Section 13-712. Here again, AI is wrong.

As noted earlier in this Brief, nothing in Section 13-712 affects the Commission's ability to establish service quality standards and penalties pursuant to Section 13-506.1 of the Act that are stricter than any found in the Commission's rules or in Section 13-712. Currently, AI is required to install 95.44% of all regular service orders within 5 days in order to avoid a service quality penalty. The Examiners' HEPO resets this benchmark to 90%, consistent with the minimum standard in the Commission's Part 730 rules, because "available data for the measure, as we here define it, does not establish a performance level consistent with the standard in our Part 730 rules, i.e. 90%." Id.

The existence of Section 13-712 in no ways alters the fact that the Examiners' conclusion that the Installation W/in 5 Days standard should be lowered should be rejected. Lowering the benchmark because AI has failed to meet even the minimum service quality standard on regular service installations is inconsistent with the statutory requirement that service quality be, "at a minimum...", maintained under the plan. *See* 220 ILCS 5/13-506.1(b). Moreover, as noted in GCI's Brief on Exceptions, the Company's performance in the Installation Within 5 days category has been woefully inadequate in recent years. It violates section 13-506.1(b)(6) for the Commission to lower its expectations of the Company merely because AI has failed to meet minimum service quality standards – especially given the Commission's desire to establish a plan

that incents the Company to improve service quality in this critical area.

In sum, HB 2900 in no way supports the Examiners' rationale on this point.

IV. AI's REQUEST FOR SIX MONTHS TO IMPLEMENT CUSTOMER COMPENSATION PROVISIONS THAT DIFFER FROM THOSE PROVIDED IN SECTION 13-712 SHOULD BE REJECTED.

In its Brief, AI asserts that should the Commission adopt customer compensation provisions that differ from those provided under Section 13-712, the Commission should permit AI a minimum of 180 days from the effective date of the order to implement such changes. AI's rationale for such a request is its assertion that the Company's "review" of the new Section 13-712 provisions suggests that implementation will take "several months of work, from first notice of the new requirements to full implementation." AI Initial Brief on Impact of New Legislation at 8. This argument is a red herring and should be rejected.

First, despite the fact that customer compensation provisions have been advocated throughout this docket, at no time has AI provided record evidence that implementation of such compensation provisions would require "several months of work" involving "system programming, development of methods and procedures, training and other activities". AI Initial Brief on Impact of New Legislation at 7-8. AI should not be permitted to stall the implementation of Commission-ordered customer compensation provisions that are stricter than those provided in Section 13-712 based on assertions that have no basis in the record.

Second, AI's request for a six-month implementation period exceeds the amount of time the Commission is allowing the Company to complete the implementation of the Section 13-712 customer compensation provisions. In ICC Docket No. 01-0485, the docket created for implementing the Section 13-712 customer compensation provisions, the Commission required AI to file tariffs

implementing the provisions by no later than September 15, 2001. *ICC – On Its Own Motion, Adoption of 83 Ill. Admin. Code Part 732*, ICC Docket No. 01-0485, Amendatory Order of July 25, 2001 at 1. That amounts to 2½ months from AI's first notice of the new requirement (when the bill was signed into law and took effect) until the September 15th implementation date. Accordingly, AI's assertion that it would take six months to implement stricter standards is empty rhetoric.

Third, because the Company will have already adjusted its systems and alerted its employees as a result of the Commission's Docket No. 01-0485 Order, it is fair to say that the Company will have had experience in implementing such programming changes. It should be expected to complete it in less time than the 2½ months it will have taken to implement the 01-0485 Amendatory Order. This is particularly true in light of the fact that it is developing the Part 732 system with the knowledge that the Commission is considering changes to that system of compensation in this docket.

For all these reasons, the Company's request for a six-month delay in implementation of customer compensation provisions should be rejected.

V. GCI AGREE WITH AT&T THAT THE BUSINESS BASKET SHOULD BE RETAINED DESPITE SECTION 13-502.5(B)'S DECLARATION THAT RETAIL BUSINESS SERVICES ARE COMPETITIVE.

In its Initial Brief Discussing Impact of Enactment of House Bill 2900, AT&T maintains that the business basket should be retained despite the reclassification of retail business services in HB 2900. Consistent with the position of GCI witness Charlotte TerKeurst (GCI Ex. 1.0 at 59-60), AT&T argues that all wholesale services should be placed in the same basket as the corresponding retail service. GCI agree that wholesale services, which correspond to retail business services, should be placed in the business basket. The business basket should be

retained, and wholesale prices should be subject to the price cap as discussed previously by GCI. See, e.g., GCI Ex. 1.0 at 58-60; GCI Ex. 11.0 at 55-57; AG Initial Brief at 61-62; GCI/City Reply Brief at 33-34.

Ameritech's argument that "there will be no Business basket under the Plan on a going-forward basis" (Am. Initial Brief of Impact of New Legislation, at 9), presumes that the Commission will reject AT&T and GCI's arguments for placing wholesale services that correspond to business retail services in the business basket. HB 2900 does not **require** the elimination of the business basket, and the business basket should be retained. This will enable the Commission to place wholesale business services in a business basket.

VI. AMERITECH AND STAFF'S POSITION THAT THE STATUTORY PACKAGES SHOULD BE PLACED IN THE RESIDENCE BASKET SHOULD BE REJECTED BECAUSE IT WILL UNFAIRLY LEAD TO HIGHER ACCESS AND USAGE CHARGES FOR LOW VOLUME CONSUMERS.

Section 13-518 requires Ameritech to offer three flat rate packages. Ameritech has already proposed one rate for the "budget" package whereby unlimited band A and B usage is priced at \$12.50 per month. The network access line fee apparently will be added to \$12.50, based on the access area. See Ameritech Advice No. 7495 and attached tariffs (July 20, 2001). Although Ameritech and Staff recommend that the statutory packages be placed in the residential basket, the price Ameritech has proposed for the "budget" plan demonstrates why the statutory plans should be in their own basket.

The statutory baskets are intended to "result in savings for the average consumer." Section 13-518(a)¹. However, the determination of savings for an "average consumer" will affect

¹ Ameritech notes that the packages would constitute "new services for purposes of the application of the price index." Ameritech Initial Brief on Impact of New Legislation at page 11,

whether the Company will be more or less willing to decrease the flat rate packages versus decreasing access or usage under basic tariffed rates. If the statutory packages are in the residence basket, and Ameritech sets the package prices relatively high², it can persist in keeping the prices for access and for usage (excluding volume discounts) at current rates despite the substantial cost reductions that have occurred during the course of the alternative regulation plan by incrementally decreasing the prices for packages.

The legislature imposed a price cap on access and usage in order to guarantee that low volume users receive benefits, or at least are not hurt, by alternative regulation. 220 ILCS 5.13-506.1(c). Putting the statutory packages in the residence basket has the high probability of harming these same low volume customers because the packaged rates (only customers will substantial usage would benefit from unlimited calling), could be lowered and the same customers who have benefitted from volume discounts would again receive reductions. The need to insure that all consumers – high volume and lower volume consumers – receive the benefit of alternative regulation should compel the Commission to create the statutory basket as recommended by GCI/City in their Reply Brief on Exceptions at pages 12-13 and in GCI's Initial Brief on the Impact of HB 2900 at 10-11.

fn 3. GCI does not accept that the packages are "new services" at all, but rather maintains that they are "re-packaged" existing services, as argued elsewhere. See GCI/City Reply Brief at 10-11, 26-27; GCI/City Brief on Exceptions at 40-42. Given the General Assembly's mandate that the packages result in savings for the average consumer, the prices should not run afoul of the price index, so there is no practical reason to exempt them from it.

² The \$12.50 flat rate for usage is equivalent to 250 band A calls at \$.05 per call (peak rate). Ameritech should be required to demonstrate that the "average consumer" makes enough calls (in both bands A and B) to justify this rate under the statutory directive that the package result in savings for the average consumer.

Ameritech argues that its ability to reduce rates in the Residence basket has been “exhausted.” Ameritech Initial Brief on Impact of New Legislation at 11. This argument is based on an erroneous cost of service study and on the faulty premise that the costs of residential network access are at least \$1.30 more than they actually are. See GCI/Cty Ex. 8.0 at 13. The Company’s resistance to flowing savings to its smallest and most inelastic customers is precisely the reason to maintain the current basket structure, and in particular, a residence basket consisting of access and usage only. Adding the statutory packages to the residence basket will give the Company another way to avoid reducing residential access and low volume usage charges.

Ameritech has long advocated that the baskets be abolished and a “single basket” structure be adopted. Putting the statutory packages, which will eventually include competitive and non-competitive services as well as services currently in various baskets, in either the residential or the other basket would complicate the basket structure and make it “unworkable”. Ameritech Initial Brief on Impact of New Legislation at 10. Further, it would seriously undermine the purposes of the baskets to protect various groups of consumers. Ameritech’s and Staff’s recommendation to put the statutory basket in the residential basket should be rejected and a statutory basket should be created.

VII. AMERITECH’S EFFORT TO AVOID A RESOLUTION OF COST OF SERVICE ISSUES IN THIS DOCKET SHOULD BE REJECTED.

Ameritech argues that it has withdrawn its rate rebalancing proposal, and that therefore “there is no need for the Commission ... to resolve the contested cost-of-service issues.” Ameritech Initial Brief on Impact of New Legislation at 14. Ameritech ignores the fact that other

parties made rate proposals which require that cost-of-service issues be resolved, including the cost basis for the residential network access line, usage charges, vertical services and non-published directory services. See, e.g., GCI/City Ex. 8.5; City of Chicago Initial Brief at 71-79; CCSAO's Initial Brief at 97-101 (corrected version); CUB Initial Brief at 147. Further, CUB/AG's Complaint, which requested that Ameritech's rates be reduced, also requires the Commission to address cost of service issues, and determine just and reasonable rates. These rate proposals are independent of the statutory packages, and should not be held up by them. Indeed, the statutory packages are required to result in savings, so the rates established to reflect Ameritech's lower cost of service should be the basis for the statutory packages – not Ameritech's unjust and unreasonably high current rates.

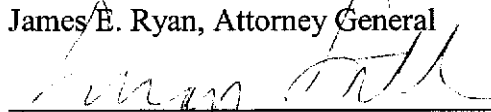
CONCLUSION

For the foregoing reasons, HB 2900 should be implemented as discussed above and in the

previous briefs of GCI and the City of Chicago.

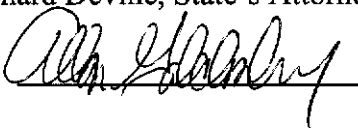
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
James E. Ryan, Attorney General



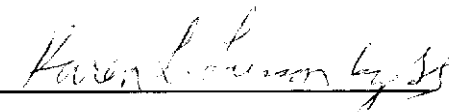
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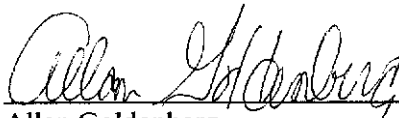
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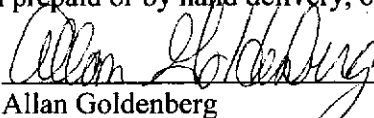
NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, August 13, 2001, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed GCI's Reply Brief on the Impact of HB 2900 in the above-captioned docket by delivering it to Federal Express for next day delivery to Donna Caton, Chief Clerk of the Illinois Commerce Commission, at 527 East Capitol Avenue, Springfield, Illinois 62794.


Allan Goldenberg
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CERTIFICATE OF SERVICE

I, Allan Goldenberg, an Assistant State's Attorney, hereby certify that a copy of the enclosed GCI's Reply Brief on the Impact of HB 2900 was served on all parties on the attached service list on the 13th day of August 2001, by United States first class mail prepaid or by hand delivery, or Federal Express, or electronic mail.


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